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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,078	11/26/2004	Roland Busses	BIG01 P498	5861

277 7590 04/09/2007  
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EXAMINER
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MICHENER, JOSHUA J

ART UNIT	PAPER NUMBER
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3644

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/500,078	<b>Applicant(s)</b> BUSSES, ROLAND	
	<b>Examiner</b> Joshua J. Michener	<b>Art Unit</b> 3644	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

#### Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 20-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20,29,40,49,60 and 69 is/are rejected.
- 7) ☒ Claim(s) 21-28,30-39,41-48,61-68 and 70-79 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Terminal Disclaimer.*

1. The terminal disclaimer filed on 1/16/2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/500566 has been reviewed and is NOT accepted.

The assignee has not established its ownership interest in the application, in order to support the terminal disclaimer. There is no submission in the record establishing the ownership interest by either (a) providing documentary evidence of a chain of title from the original inventor(s) to the assignee and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11, or (b) specifying (by reel and frame number) where such documentary evidence is recorded in the Office (37 CFR 3.73(b)).

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned

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with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 20, 40, and 60 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20, 27, 40, 47, 60, and 67 of copending Application No. 10/500566 ('566). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 20, 40, and 60 broadly encompass the scope of claims 20, 27, 40, 47, 60, and 67 of copending '566.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 20, 40 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by ~~Cole (US 5092274)~~ Hostetler (US 3388690). TZ

5. For claims 20, 40, and 60, Hostetler discloses at least one feed delivery pipe (20) held above a floor of the coop and capable of being raised and lowered, the pipe having at least one aperture, comprising: a bowl device (10) configured to be suspended on the feed delivery pipe, the bowl device including a feed bowl (34) located beneath a downpipe, the bowl device further including a cupola (26) formed from grid bars in spoke fashion, wherein the downpipe comprises

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an inner cylinder (22) configured to depart from the aperture and an outer cylinder (36) encompassing the inner cylinder, on which the bowl is suspended by the grid bars (figure 4) of the bowl cupola in such a way that, when the feed delivery pipe is lowered, the bowl comes to rest on the floor of the coop, wherein the outer cylinder is guided in a rotatable manner as well as in a raisable and lowerable manner on the inner cylinder, and at least one lifting stop (75,74) is provided for delimiting a lifting and lowering path of the bowl; wherein the downpipe includes at least one rotational stop (72,74) delimiting a rotational path of the outer cylinder in relation to the inner cylinder.

**6. Claims 20, 29, 40, 49, 60, and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al. (US 5,092,274).**

7. For claims 20, 40, and 60, Cole discloses (see all figures) at least one feed delivery pipe held above a floor of the coop and capable of being raised and lowered, the pipe having at least one aperture, comprising: a bowl device (38) configured to be suspended on the feed delivery pipe, the bowl device including a feed bowl located beneath a downpipe, the bowl device further including a cupola (46) formed from grid bars in spoke fashion, wherein the downpipe comprises an inner cylinder (42) configured to depart from the aperture and an outer cylinder (56) encompassing the inner cylinder, on which the bowl is suspended by the grid bars of the bowl cupola in such a way that, when the feed delivery pipe is lowered, the bowl comes to rest on the floor of the coop, wherein the outer cylinder is guided in a rotatable manner as well as in a raisable and lowerable manner on the inner cylinder, and at least one lifting stop (72) is provided for delimiting a lifting and lowering path of the bowl; wherein the downpipe includes at least

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one rotational stop (65, 68) delimiting a rotational path of the outer cylinder in relation to the inner cylinder (see column 2, lines 23 – 28).

8. For claims 29, 49 and 69, as best understood, Cole discloses the device according to claim 20, wherein: an end-side cylinder section of the inner cylinder covers a gap area between the outer cylinder (see for example figures 8 and 11).

#### **Allowable Subject Matter**

9. Claims 21-28, 30-39, 41-48, 61-68 and 70-79 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

10. Applicant's arguments filed 1/16/2007 have been fully considered but they are not persuasive.

11. In response to Applicant's argument that Hostetler fails to teach of a rotational and lifting stop, the Examiner disagrees. As seen above, to further clarify, elements (72, 75) in combination with element (74) in fact delimit lifting and rotation by frictionally engaging the inner cylinder, thereby encompassing the scope of the claim. Applicant has provided no structure in the claim that differentiates Applicant's invention from Hostetler.

12. In response to Applicant's argument that Cole fails to teach of a rotational stop, Examiner disagrees. As seen above, one rotational stop (65, 68) delimiting a rotational path of the outer cylinder in relation to the inner cylinder and to further clarify that there is limiting of rotation (see column 2, lines 23 – 28).

*Conclusion*

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua J. Michener whose telephone number is 571-272-1467. The examiner can normally be reached on Monday through Friday 7-4.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua J Michener  
Examiner  
Art Unit 3644

jjm

  
TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER